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Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: Erratum - MM Docket No. 92-264  
Comments of Sandler Capital Management

Dear Ms. Searcy:

Enclosed herewith is an Erratum to the Comments that were filed yesterday by Sandler Capital Management in MM Docket No. 92-264 Implementing Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992. Please replace pages 4, 8, 21 and 25, and insert page 6 in the Comments that were filed.

Should there be any questions regarding this Erratum, please contact the undersigned.

Sincerely yours,

Peter H. Feinberg

PHF/rsr  
Enclosure(s)

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Congress sought only to prevent profiteering transactions that could affect cable television rates or service, while the broadcast transfer policies have the additional objectives of ascertaining legal, financial, and other qualifications of licensees. Some changes that would constitute a "long-form" change of control under broadcast policies nevertheless are not accompanied by a transfer of equity ownership sufficient to raise any question of "profiteering" transactions that could reasonably be expected to have any impact on cable rates and services. Thus, in adopting the broadcast transfer policies as the basis for its regulations interpreting Section 617, the Commission should remain faithful to Congress's purpose and acknowledge appropriate exceptions for certain transactions.

I. The Commission Should Apply a "Substantial Transfer of Control" Standard To Those Transactions Affected by Section 617.

Congress initiated the three-year holding period to limit "profiteering transactions" that would adversely affect cable television system rates or service in the

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subsequently to upgrade cable services and transmission facilities. The dynamic technological environment in which cable systems operate accentuate those continuing capital needs. Annual estimated industry expenditures on construction range between two and three billion dollars for the rest of the decade.<sup>6/</sup> The Commission must avoid adopting regulations that will constrain the capability of the cable television industry to attract funds for the anticipated investment in facilities and equipment and necessary investments in programming which are essential to maintain and to improve services. These investments in programming and in the highway of the future will enable operators to take advantage of technological advances to provide subscribers with innovations and diverse services. Congress intended only to prohibit those "profiteering" transactions, such as rapid "flips" of individual cable systems, that could leave systems cash-starved and debt-laden, thus leading to pressure to increase rates and scrimp on service. Restrictions that inhibit capital formation or discourage transactions that could lead to enhanced business efficiencies would be the antithesis of what Congress has mandated.<sup>7/</sup>

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6/ See 1991 Financial Databook, Paul Kagan Assoc. at 11.

7/ For example, Congress, expressly recognized, as a policy objective, that cable operators must be able to expand their capacity and the progress offered on their cable systems. Cable Act, Section (b)(3).

from plenary procedures as pro forma transactions. While the narrower purposes of the Cable Act provision make certain additional exemptions appropriate, the existing distinctions between "substantial" and "pro forma" changes in control largely parallel those transactions that Congress intended to subject to the holding period and those it intended to exempt. Thus, Section 617 generally exempts "any sale required by operation of any law" and "any sale, assignment, or transfer to one or more purchasers, assignees, or transferees controlled by, controlling, or under common control with, the seller, assignor or transferor." This general language mirrors the Commission's construction of Section 73.3540(f) of its rules for voluntary pro forma transactions and Section 73.3541 for involuntary transactions, changes that the Commission exempts from full review.<sup>9/</sup>

The distinction between "substantial" and pro forma changes of control is rooted in the Communications Act, which provides that those applications which involve a "substantial change of ownership or control" be subject to a public notice period and to petitions to deny. 47 U.S.C.A.

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<sup>9/</sup> Section 73.3541 of the Commission's broadcast rules treats as pro forma those changes in ownership and control that result from a voluntary or involuntary bankruptcy, the judicial appointment of a receiver or trustee or the death or incapacity of a controlling principal of a broadcast licensee.

F. Implementation of the Anti-Trafficking Rules Should Not Delay the Transfer Process.

The franchising authority should have primary responsibility for monitoring the anti-trafficking rules. Sandler supports the Commission's tentative conclusion that local franchising authorities can most efficiently monitor compliance with the anti-trafficking restrictions, thereby assuring that the transfer of a cable system will not unduly be delayed. A certificate filed with a franchising authority should carry with it a presumption that the cable operator is in compliance with the statute or is exempt under one of its provisions.<sup>19/</sup> As discussed below, Sandler believes that the Commission's special relief procedures would be an appropriate vehicle by which a franchising authority could test whether such a certificate was bona fide. In order to insure that the statute and the Commission's implementing regulations are interpreted consistently, the Commission should retain jurisdiction over all disputes relating to the anti-trafficking rules.

Operators seeking to transfer ownership of a cable system prior to the expiration of the three-year holding period should only be required to provide the franchising authority with a certificate citing the appropriate provision in the Commission's regulations which supports the exemption.

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<sup>19/</sup> NPRM at ¶ 8.

Sandler also supports the concept of a "contingent" waiver, issued by the Commission, which would be conditional on securing the franchising authority's approval of the transfer, when required. A cable operator should have the discretion to first submit a waiver petition to the franchising authority and then to the Commission, or vice versa, or, where appropriate, to the franchising authority and the Commission simultaneously. If the Commission approves the petition before the franchising authority, it may grant it on a contingent basis.

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23/ (...continued)  
provided with a strong presumption in favor of a grant of the waiver.